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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AUG 30 2004

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

2004 AUG 30 A 10: 59

AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
OCMC, INC. TO OBTAIN A CERTIFICATE OF  
CONVENIENCE AND NECESSITY FROM ONE  
CALL COMMUNICATIONS, INC. DBA  
OPTICOM TO PROVIDE  
TELECOMMUNICATIONS SERVICES AS A  
PROVIDER OF RESOLD INTEREXCHANGE  
SERVICES AND ALTERNATIVE OPERATOR  
SERVICES WITHIN THE STATE OF ARIZONA.

DOCKET NO. T-04103A-02-0274  
T-02565A-02-0274

PROCEDURAL ORDER

**BY THE COMMISSION:**

On July 15, 2002, OCMC, Inc. ("OCMC" or "Applicant") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold interexchange services and alternative operator services in the State of Arizona ("Application").<sup>1</sup> Specifically, OCMC seeks to transfer the existing Certificate of One Call Communications, Inc. dba Opticom ("Opticom") based on its purchase of Opticom's assets.

On June 24, 2002, OCMC published notice of its Application in *The Arizona Republic* notifying any interested parties of their right to intervene.

On September 20, 2002, the Commission's Utilities Division ("Staff") filed its Staff Report.

On September 24, 2002, Staff filed a Motion for Stay of Proceedings based on the Federal Communications Commission's ("FCC") issuance of a "Notice of Apparent Liability for Forfeiture" ("NAL").

By Procedural Order dated October 15, 2002, Staff's Motion for Stay was granted and the time clock provisions of A.A.C. R14-2-510.E were stayed to permit Staff additional time to conduct further discover.

<sup>1</sup> OCMC's original application filed on April 9, 2002 was amended on July 15, 2002 to include provision of AOS services.

1 On January 8, 2004, OCMC filed a Motion to Lift Stay and Notice of Substitution of Counsel,  
2 which indicated that OCMC had entered into a Consent Decree with the FCC the terms of which  
3 terminate the FCC's investigation.

4 By Procedural Order dated January 26, 2004, OCMC's Motion was granted, and Staff was  
5 ordered to submit an Amended Staff Report, which provides its recommendation with regard to: (1)  
6 approval of OCMC's Application in light of the information submitted in conjunction with OCMC's  
7 Motion; (2) whether the transfer of assets from Opticom to OCMC is subject to the provisions of  
8 A.R.S. § 40-285; and (3) if the transfer is subject to that statutory provision, whether the transfer  
9 should receive retroactive approval.

10 On February 25, 2004, Staff submitted its Amended Staff Report, which indicated that the  
11 sale and transfer of assets from Opticom to OCMC is not subject to the provisions of A.R.S. § 40-285  
12 as no physical assets were transferred, yet Staff recommended retroactive approval of the sale and  
13 transfer of assets for the same transaction.

14 On March 15, 2004, a Procedural Order was issued setting this matter for hearing to clarify  
15 the extent to which the underlying transaction is subject to the provisions of A.R.S. § 40-285.

16 On or about March 16, 2004, a conference call with Michael Hallam, Timothy Sabo, and the  
17 undersigned administrative law judge was held during which Mr. Hallam, as counsel for Applicant,  
18 indicated that OCMC intends to pursue a waiver of the Commission's requirement with regard to  
19 zero minus calls. Based on the fact that this matter had been set for hearing, Mr. Hallam indicated  
20 that OCMC would address the issue at the hearing scheduled for April 6, 2004.

21 On March 23, 2004, Staff filed a Motion to Vacate Hearing, which indicated that Staff's  
22 recommendation for retroactive approval was included in error and that A.R.S. § 40-285 approval is  
23 not necessary given the lack of physical assets.

24 By Procedural Order dated March 26, 2004, the hearing set for April 6, 2004 was vacated,  
25 OCMC was ordered to file either a request for a waiver pursuant to A.A.C. R14-2-1006 or an  
26 indication that it no longer intends to pursue such waiver, and the time clock provisions for  
27 processing the Application were suspended from March 26, 2004 until April 26, 2004.

28 On March 29, 2004, OCMC filed its Verified Amendment to Application, which requested a

1 waiver pursuant to A.A.C. R14-2-1006 to allow OCMC to complete zero-minus calls, including  
2 emergency calls, over OCMC's telecommunications network. In conjunction with its waiver  
3 request, OCMC provided a description of its facilities and its zero minus call completion procedures.

4 On April 26, 2004, Staff filed its Amended Staff Report, which continued to recommend  
5 approval of OCMC's Application. Staff did not, however, recommend approval of OCMC's request  
6 for a waiver pursuant to A.A.C. R14-2-1006. Specifically, Staff concluded that although OCMC has  
7 the capability to process zero-minus calls quickly and accurately, it failed to provide information  
8 required by the rule relating to the manner in which the local exchange carrier ("LEC") processes  
9 such calls.

10 On May 13, 2004, OCMC filed its Verified Response to Staff Report arguing that OCMC has  
11 provided sufficient information for the Commission to grant a waiver pursuant to A.A.C. R14-2-  
12 1006. OCMC argues that should it be determined, however, that OCMC has failed to provide  
13 requisite data relating to the LEC's processing of such calls, a waiver of such a requirement is in the  
14 public interest pursuant to A.A.C. R14-2-1014. Finally, OCMC argues that if additional information  
15 relating to the LEC is required and that a waiver of such requirement is not in the public interest, it  
16 should be granted the opportunity to work with Commission Staff to provide the necessary  
17 information to support its request for a waiver pursuant to A.A.C. R14-2-1006.

18 By Procedural Order dated May 24, 2004, OCMC was ordered to work with Staff in an effort  
19 to provide the information required pursuant to A.A.C. R14-2-1006.B relating to the manner in which  
20 the LEC provides zero-minus calls. OCMC was provided 60 days in which to provide the necessary  
21 information, Staff was ordered to file an Amended Staff Report indicating its recommendation with  
22 regard to approval of OCMC's waiver request as set forth in its Amended Application at the  
23 expiration of the 60 day period, and the time clock provisions for processing the Application were  
24 further stayed until July 23, 2004.

25 On July 23, 2004, Staff filed its Motion to Extend Due Date for Staff Report, which indicated  
26 that it had received no response to the data requests issued in an attempt to elicit the necessary  
27 information and requested an additional 30 days to obtain and analyze the requisite information.

28 By Procedural Order dated July 26, 2004, Staff was ordered to file its Amended Staff Report

1 on or before August 23, 2004, and the suspension of the time clock provisions of A.A.C. R14-2-  
2 510.E was extended until August 23, 2004.

3 On August 23, 2004, Staff filed a Supplemental Staff Report, which examined OCMC's  
4 request for a waiver pursuant to A.A.C. R14-2-1006 by utilizing a comparison of the facilities, call  
5 completion procedures, call processing sequences, and call processing times of OCMC and Qwest as  
6 the predominant LEC operating in the area to be served by OCMC. Based upon the information  
7 provided by OCMC, Staff concluded that it is not possible to make an objective comparison between  
8 the call processing times of OCMC and Qwest, and therefore, Staff cannot recommend granting  
9 OCMC's waiver.

10 On August 26, 2004, OCMC filed a letter indicating that it is working to determine if it has  
11 any additional data, which would allow Staff to make the comparisons at issue.


12 Based upon the fact that a dispute remains as to the adequacy of the information provided by  
13 OCMC for Staff's review and therefore, the standard to be met in granting a waiver of the zero-minus  
14 rules, it is appropriate to set this matter for hearing.

15 IT IS THEREFORE ORDERED that the hearing on OCMC's request for a waiver of the  
16 Commission's zero-minus rules, as set forth in OCMC's Amended Application, shall commence on  
17 **September 20, 2004 at 9:30 a.m.**, or as soon thereafter as is practical, at the Commission's offices,  
18 1200 West Washington Street, Phoenix, Arizona 85007.

19 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
20 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

21 IT IS FURTHER ORDERED that that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized  
22 Communications) applies to this proceeding as the matter is now set for public hearing.

23 DATED this 30<sup>th</sup> day of August, 2004.

24  
25  
26   
27 AMANDA POPE  
28 ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered  
2 this 30 day of August, 2004 to:

3 Thomas Campbell, Esq.  
4 Michael Hallam, Esq.  
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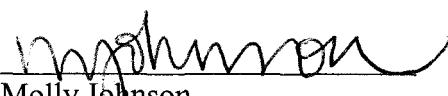
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By:   
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Secretary to Amanda Pope